

STATE OF MICHIGAN
COURT OF APPEALS

In re H. J. DECROSTA, Minor.

UNPUBLISHED
October 12, 2017

No. 337558
Grand Traverse Circuit Court
Family Division
LC No. 16-004195-NA

Before: MURRAY, P.J., and SAWYER and MARKEY, JJ.

MURRAY, P.J., (*concurring*).

I concur with the majority opinion’s conclusion to affirm the trial court’s March 14, 2017 order of disposition. However, for the reasons briefly explained below, I would affirm based upon the issue actually raised by respondent.

Respondent’s appeal raises two issues. First, respondent argues that the trial court’s reading “of the full petition, as part of the jury instruction, including the narrative component which contains issues of hearsay, was unduly prejudicial to [respondent’s] case” and, therefore, should be reversed. In making this argument, respondent relies upon MRE 103, MRE 403, and caselaw applying those rules of evidence. As petitioner argues on appeal, respondent’s arguments cannot succeed because the contents of the petition were never admitted as evidence before the jury. Indeed, the trial court specifically instructed the jury that it was *not* evidence, a fact reiterated by both counsel during their arguments to the jury. Because the petition was not admitted into evidence, MRE 103 and 403 are inapplicable. And, because the trial court instructed the jury that the petition was not evidence and that fact was reiterated by both counsel, even if it had been admitted as evidence, no prejudice would have resulted to respondent through the reading of the petition. Finally, I agree with the majority opinion that, as to issue two, respondent has not primed the appellate pump in that no law is cited whatsoever in support of the argument.

/s/ Christopher M. Murray